

N/39

ASSAM ACT IV OF 1939.

THE ASSAM SALES OF MOTOR SPIRIT AND LUBRICANTS TAXATION ACT, 1939.

[Passed by the Assam Legislature]

[Received the assent of the Governor on the 23rd May, 1939.]

[Published in the Assam Gazette of the 31st May 1939.]

An Act to provide for the levy of a tax on retail sales of motor spirit and lubricants.

Preamble. WHEREAS it is expedient to provide for the levy of a tax on the retail sales of motor spirit and lubricants ;

It is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Act may be cited as the Assam Sales of Motor Spirit and Lubricants Taxation Act, 1939.

- (2) It extends to the whole of Assam.
(3) It shall come into force from such date as the Provincial Government may, by notification, direct.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "Excise Commissioner" means the officer appointed under clause (a) of subsection (2) of section 8 of the Eastern Bengal and Assam Excise Act, 1910 or such other officer as may be appointed by the Provincial Government for the purposes of this Act.
(b) "lubricant" means any form of oil or other lubricating substance ordinarily used for lubricating the internal machinery of motor vehicles ;
(c) "motor spirit" means any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbon) which is ordinarily used for providing reasonably efficient motive power for any form of motor vehicle ;
(d) "prescribed" means prescribed by rules made under this Act ;
(e) "retail dealer" means any person who, on commission or otherwise, sells or keeps for sale motor spirit or lubricant or both motor spirit and lubricant for the purpose of consumption by the person by whom or on whose behalf either or both is or are purchased ;

Price Indian 1 anna]

[Price English 1d.

(f) "retail sale" means a sale by a retail dealer of motor spirit or lubricant or both motor spirit and lubricant to a person for the purpose of consumption by the person by whom or on whose behalf either or both is or are purchased.

Levy of tax. 3.(1) There shall be levied and collected from every retail dealer a tax on the retail sales of motor spirit and lubricants at the rate of two annas and three annas respectively per gallon.

(2) If any tax payable under sub-section (1) is not paid within the time fixed by a notice issued in the prescribed manner, the prescribed authority may, in lieu thereof, recover any sum not exceeding double the amount of the tax so unpaid, or any smaller sum above the unpaid amount of the tax, which such authority may think it reasonable to recover.

Recovery of sums as arrears of land revenue. 4. Any sum recoverable under section 3 may be recovered as an arrear of land revenue.

Registration of retail dealers and registration certificate. 5. (1) Every retail dealer shall, within three months of this Act coming into force or of his starting business as a retail dealer, register himself as a retail dealer by an application made to the Deputy Commissioner of the district in which his place of business is situate or to any officer of the Excise or Revenue Department specially empowered by the Provincial Government in this behalf in such district and, on such registration, the Deputy Commissioner or officer shall grant him a registration certificate in such form and subject to such conditions as may be prescribed.

(2) Every registration certificate granted under sub-section (1) shall expire on the 31st day of March following the date of the grant and may be renewed annually.

(3) Every registration certificate shall be granted or renewed free of charge.

Prohibition of sale without registration certificate. 6. No person shall carry on business as a retail dealer in any district without holding a registration certificate under section 5.

Penalty for unauthorised sale. 7. Whoever contravenes the provisions of section 6 shall be punishable with fine which may extend to one thousand rupees, or to a sum double the amount of the tax payable under section 3 in respect of any sales conducted by such person, whichever is greater.

Suspension
or cancel-
lation of re-
gistration
certificate.

8. (1) Subject to such conditions as may be prescribed, the prescribed authority may suspend or cancel a registration certificate—

- (a) if any tax payable under section 3 is not duly paid by the holder of such certificate ; or
- (b) if there is any breach of any of the conditions subject to which a registration certificate is granted.

(2) The holder of a registration certificate shall not be entitled to any compensation for its suspension or cancellation under sub-section (1).

Delegation of
powers and
duties.

9. The Provincial Government or, subject to the orders of the Provincial Government, the Excise Commissioner may invest any officer or person with such powers and impose upon him such duties under this Act, as the Provincial Government or the Excise Commissioner, as the case may be, may deem fit and any such officer or person shall thereupon exercise the said powers and discharge the said duties.

Issue of
warrants.

10. (1) Any officer of the Excise or Revenue Department specially empowered by the Provincial Government in this behalf may issue a warrant—

- (a) for the arrest of any person whom he has reason to believe to have committed an offence punishable under this Act, or
- (b) for the search, whether by day or by night, of any building, vessel, vehicle or place in which he has reason to believe that any motor spirit or lubricant is sold or is kept for sale.

(2) All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a Police officer or if the officer issuing the warrant deems fit by any other person.

V of 1898

Power of
entry, search
seizure, de-
tention and
arrest.

11. Any officer of the Excise or Revenue Department specially empowered by the Provincial Government in this behalf may—

- (a) enter and search, at any time, by day or by night, any building, vessel, vehicle or place in which he has reason to believe that any motor spirit or lubricant liable to confiscation under this Act is kept or concealed ;
- (b) seize any motor spirit or lubricant or any other article which he has reason to believe is liable to confiscation under this Act ; and
- (c) detain and arrest any person whom he has reason to believe to be guilty of any offence punishable under this Act.

- Searches how made. 12. All searches made under section 11 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898. V of 1898.
- Procedure for arrest without warrant. 13. The provisions of section 61 of the Code of Criminal Procedure, 1898, shall apply to all arrests without warrant made under section 11. V of 1898.
- Duty of certain persons to report offences, etc. 14. Every official employed by the Provincial Government, by any local body, or by the Court of Wards, and every village Chowkidar and Gaonbura shall give immediate information to the Deputy Commissioner of the commission of any offence or of the intention or preparation to commit any offence punishable under this Act which may come to his knowledge, and such person shall take all reasonable measures in his power to prevent the commission of any such offence which he may know or has reason to believe is about or likely to be committed.
- Power of investigation. 15. (1) Every officer of the Excise or Revenue Department not below such rank as may be prescribed shall, within the area for which he is appointed, have power to investigate all offences punishable under this Act.
- (2) Every such officer shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of the police station for the investigation of a cognizable offence: V of 1898.
- Provided that if such officer is of opinion that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of an accused to a Magistrate, or that the person arrested may be discharged with a warning, such officer shall release him on his executing a bond, with or without sureties, to appear if and when so required before a Magistrate and shall make a full report of the case to the Deputy Commissioner and be guided by the order which he shall receive on such report.
- Offences to be bailable. 16. (1) All offences punishable under this Act shall be bailable.
- (2) Any officer empowered under section 15 shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure, 1898, to any person arrested without warrant for an offence punishable under this Act. V of 1898.
- Procedure on seizure. 17. When anything has been seized by an officer exercising powers under section 15 such officer, after such inquiry as may be necessary—
- (a) if it appears that such thing is required as evidence in the case of any person arrested, shall forward the thing to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken;

(b) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall send the thing with a report of the particulars of the seizure to the Deputy Commissioner ;

(c) if no offence appears to have been committed shall return the thing to the person from whose possession it was taken and shall report to the Deputy Commissioner accordingly.

Punishment
for vexatious
search or
arrest.

18. Any officer or person exercising powers under this Act, who—

(a) without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel, vehicle or place ; or

(b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for anything liable to confiscation under this Act ; or

(c) vexatiously and unnecessarily detains, searches or arrests any person, shall on conviction be punishable with fine which may extend to five hundred rupees.

Punishment
for vexatious
delay.

19. Any officer or person exercising powers under this Act who vexatiously and unnecessarily delays forwarding to a Magistrate any person arrested under this Act and not released by him on bail shall on conviction be punishable with fine which may extend to two hundred rupees.

Things liable
to confisca-
tion.

20. Whenever an offence punishable under this Act is committed, the motor spirit or lubricant in respect of which the offence has been committed shall be liable to confiscation.

Procedure in
making con-
fiscation.

21. (1) When in any case tried by a Magistrate the Magistrate decides that anything is liable to confiscation under section 20, he may, after hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim, order confiscation or may give the owner option to pay such fine as the Magistrate deems fit in lieu of confiscation.

(2) When an offence under this Act has been committed and the offender is not known or cannot be found or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the Deputy Commissioner may enquire into and decide the case, and may order confiscation :

Provided that no such order shall be made before the expiration of one month from the date of seizure or without hearing any person who may claim any right thereto and any evidence produced in support of such claim.

Power to compound offences.

22. (1) The Deputy Commissioner may accept from any person who has committed an offence punishable under this Act, by way of composition of such offence, a sum of money not exceeding one thousand rupees or a sum double the amount of the tax payable under section 3 in respect of any sales conducted by such person, whichever is greater.

(2) On the payment of such sum of money to the Deputy Commissioner, the accused person shall be discharged, the property seized, if any, shall be released and no further proceedings shall be taken against such person or property in respect of such offence.

Cognizance of offence.

23. (1) No Magistrate shall take cognizance of any offence punishable under this Act,—

(i) except upon the complaint or report of the Deputy Commissioner, or

(ii) except upon his own knowledge or suspicion.

(2) Except with the sanction of the Provincial Government, no Magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within six months from the date on which the offence is alleged to have been committed.

Protection of persons acting in good faith and limitation of suits and prosecutions.

24. (1) No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(2) No suit shall be instituted against the Crown and no prosecution or suit shall be instituted against any person in respect of anything done or intended to be done, under this Act unless the suit or prosecution has been instituted within four months from the date of the act complained of.

Appeal and revision.

25. (1) Any person aggrieved by any order under this Act may appeal—

(a) to the Excise Commissioner, if such order is passed by a Deputy Commissioner, and

(b) to the Deputy Commissioner, if such order is passed by an officer or person exercising powers under this Act.

(2) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (3) be final.

(3) The Provincial Government or the Excise Commissioner, may, at any time, call for and examine the record of any order of, or the proceedings recorded by, any officer or person for the purpose of satisfying itself or himself as to the legality or propriety of such order passed by, or as to the regularity of such proceedings of, such officer or person and may pass such order in reference thereto as it or he thinks fit.

Power to
make rules.

26. (1) The Provincial Government may make rules not inconsistent with this Act, to carry out all or any of the purposes thereof.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules with reference to—

- (a) all matters expressly required or allowed by this Act to be prescribed ;
- (b) the regulation of the recovery of the tax leviable under section 3 ;
- (c) the powers and duties to be exercised or performed by officers or persons under section 9 ;
- (d) the imposing on retail dealers of the duty of furnishing returns and keeping records and books, the prescribing of forms of such returns, records and books and the particulars to be contained therein respectively, and the manner in which the same are to be verified and all such other conditions thereof as may be necessary ;
- (e) the providing for the regulation of sale of motor spirit and lubricants, the assessment of tax and the issue of notices requiring payment and for the recovery of unpaid tax.

(3) All rules made under this Act shall be subject to the condition of previous publication.

(4) In making any rule, the Provincial Government may direct that a breach thereof shall be punishable with fine which may extend to five hundred rupees, and, where the breach is a continuing one, with further fine which may extend to one hundred rupees for every day after the first during which the breach has been persisted in.